

the requester considers this to be an adverse determination, why the requester thinks that the search does not meet the requirements of the FOIA.

(5) The Deputy Archivist shall consult with the agency specifying the restriction, when appropriate, and make a determination within 20 workdays after the date of receipt by the Deputy Archivist of the appeal. If an extension is required, the Deputy Archivist shall notify the requester within 20 workdays from receipt of the request. Time extensions shall not exceed 10 workdays in the aggregate: either solely in the initial stage or solely in the appellate stage, or divided between them.

(6) If the determination is adverse in whole or in part, the Deputy Archivist shall notify the requester of the right to judicial review.

(7) Denials and appeals of denials of access to information under the FOIA exemption 552(b)(1), national security information, are processed in accordance with the provisions of § 1254.40.

[54 FR 32069, Aug. 4, 1989, as amended at 56 FR 2136, Jan. 22, 1991; 57 FR 22431, May 28, 1992]

**§ 1254.39 Requests for commercial information.**

(a) *Notice of receipt of request.* (1) Submitters of potentially confidential commercial information shall be given written notice and an opportunity to object to release when a request is received for information the submitter designated in accordance with the recipient agency's regulations as commercial confidential, and the request is received less than 10 years after submission of the information.

(2) When the request is for information from a single or small number of submitters, the notice shall be sent to the submitter's last known address.

(3) When the request is for information from a large number of submitters, notice shall be provided by publication of a notice in the FEDERAL REGISTER.

(4) The notice shall either describe the potentially commercially confidential information requested (if the notice is published in the FEDERAL REGISTER), or provide copies of the records containing the information.

(5) NARA shall inform the requester that:

(i) Notice of receipt of a request has been provided to the submitter;

(ii) The response to the request may be delayed beyond the limitations specified in 5 U.S.C. 552(a)(6) (A) and (B) to allow for time to provide notice to the submitter, and to consider any response;

(iii) The delay may be considered as a denial of access to records and that the requester may seek judicial review. However, the requester shall be invited to agree to a voluntary extension of time so that NARA may consider any claims of commercial confidentiality provided by the submitter.

(b) *Opportunity to object to disclosure.*

(1) Through the notice described in paragraph (a)(1) of this section, NARA shall afford a submitter a reasonable period of time within which to provide NARA with a detailed statement of any objections to disclosure. A reasonable extension of the time limit for response may be granted when appropriate.

(2) The statement shall specify which information is claimed to be of a confidential commercial nature, and shall specify all grounds for withholding any of the information under the exemptions of the FOIA. If exemption (b)(4) of the FOIA is cited, the statement shall explain how the release of the information can be reasonably expected to cause substantial competitive harm to the submitter.

(3) The statement shall contain a certification that the information has not been published or officially released to the public.

(4) The statement provided pursuant to this subsection may itself be subject to disclosure under the FOIA under § 1250.75.

(c) *Notice of intent to disclose.* NARA shall carefully consider any good faith designations of commercial confidentiality made when the information was initially submitted to an agency, and any timely objections submitted in response to the NARA notice of receipt of a request to release. Except as provided for in paragraph (e) of this section, when NARA determines to disclose, whether in response to a request to release or as the result of an appeal of a

denial of access, notice shall be sent to the submitter that:

(1) States why the initial designation or the objections were not sustained;

(2) Describes or encloses a copy of the information proposed for disclosed; and

(3) Specifies a date on which it is proposed to release the information unless barred by court order. The requester shall be simultaneously informed of the disclosure date.

(d) *Notice of law suit.* NARA will promptly inform the requester and submitter of any law suit filed by the other concerning possible disclosure.

(e) *Exception to notice requirements.* The notice requirements of this section do not apply when:

(1) NARA determines that the information should not be disclosed in accordance with one or more FOIA exemptions;

(2) The information has been published or officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or,

(4) More than 10 years have passed since the date of submission, regardless of any designation as commercially confidential made by the submitter in accordance with the recipient agency's regulations, and NARA has no substantial reason to believe that disclosure would result in competitive harm.

(5) The submitter failed to respond to a notice of receipt of request, in which case this initial notice shall serve as the notice of intent to disclose.

[54 FR 32070, Aug. 4, 1989]

### Subpart D—Access to National Security Information

#### § 1254.40 Access to national security information.

(a) Declassification of and public access to national security information and material, hereinafter referred to as "classified information" or collectively termed "information" is governed by Executive Order 12356 of April 2, 1982 (3 CFR, 1982 Comp., p. 166), the implementing Information Security Oversight Office Directive Number 1 of June 22, 1982 (47 FR 27836, June 25, 1982) and

the Freedom of Information Act (5 U.S.C. 552).

(b) Public access to documents declassified in accordance with this regulation may be restricted or denied for other reasons under the provisions of 5 U.S.C. 552(b) for accessioned agency records; 36 CFR 1254.36 for donated historical materials; 44 U.S.C. 2201 *et seq.* and 36 CFR part 1270 for Presidential records; and 44 U.S.C. 2111 note and 36 CFR part 1275 for Nixon Presidential materials.

[59 FR 29194, June 6, 1994]

#### § 1254.44 Freedom of Information Act requests.

(a) *Requests for access to national security information under the Freedom of Information Act.* Requests for access to national security information under the Freedom of Information Act are processed in accordance with the provisions of § 1254.38. Time limits for responses to Freedom of Information Act requests for national security information are those provided in the act rather than the longer time limits provided for responses to mandatory review requests specified by Executive Order 12356.

(b) *Agency action.* Upon receipt of a request forwarded by NARA for a determination regarding declassification, the agency with declassification responsibility shall:

(1) Advise whether the information should be declassified in whole or in part or should continue to be exempt from declassification;

(2) Provide a brief statement of the reason any requested information should not be declassified; and

(3) Return all reproductions referred for determination, including a copy of each document which should be released only in part, marked to indicate the portions which remain classified.

(c) *Denials and Appeals.* Denials under the Freedom of Information Act of access to national security information accessioned into the National Archives are made by designated officials of the originating or responsible agency. NARA notifies the requestor of the agency's determination. Appeals of denials of access to national security information must be made in writing to